UNITED
NATIONS

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United Nations
Conference
on Trade and
Development

Distr.
LIMITED

TD/B/RBP/L.68
10 March 1995

Original : ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts
on Restrictive Business Practices
Fourteenth session
Geneva, 6 March 1995
Agenda item 3(a) & (b)

PREPARATIONS FOR THE THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES:

(a) REVIEW OF 15 YEARS OF APPLICATION AND IMPLEMENTATION OF THE SET;
(b) FORMULATION OF PROPOSALS FOR THE IMPROVEMENT AND FURTHER DEVELOPMENT OF THE SET OF PRINCIPLES AND RULES

Draft agreed conclusions of the Intergovernmental Group of Experts

I.

1. In order to assist the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in its work, the Intergovernmental Group of Experts on Restrictive Business Practices requests the UNCTAD secretariat to:

(a) Prepare a draft study on the scope, coverage and enforcement of competition laws and policies in member States and analysis of the provisions of the Uruguay Round Agreements relevant to competition policy, including their implication for developing and other countries, in accordance with the outline as contained in TD/B/RBP/105, and taking into account the comments made during the present session of the Intergovernmental Group of Experts;

(b) Prepare a draft note describing selected cases of Restrictive Business Practices that have an effect in more that one country, in particular developing and other countries, with overall conclusions regarding the issues raised by these cases;

(c) Prepare a further in-depth feasibility study of developing a bibliography of relevant materials dealing with Restrictive Business Practices issues, and the implementation of an appropriate database facility relating to decisions by competition authorities and courts, taking into account the comments made during the present session;

(d) Revise further the commentary to the model law in accordance with the proposals contained in TD/B/RBP/Misc.16 and comments to be received by the secretariat before 15 May 1995;

(e) Prepare a review and assessment of 15 years of application and implementation of the Set;

(f) Organize, resources permitting, a regional workshop on Competition Policy for African countries, to be held in Tunisia, within the preparatory process for the Third Review Conference;

(g) In view of the importance of the documentation to be prepared for the Third Review Conference, make every effort for the documents to be made available well in advance of the Conference in line with United Nations regulations;

(h) Consider, together with developed countries, ways and means to increase the participation of (more capital based) Experts particularly from developing countries, least developed countries and countries in transition in the work of the Intergovernmental Group of Experts, Review Conference, and other exercises.

II.

2. In conformity with Article 26 of the draft provisional rules of procedure of the Review Conference as proposed by the Intergovernmental Group of Experts, the following proposals are put forward for consideration by the Third Review Conference:

(a) Taking into account increased needs for technical cooperation and technical assistance in developing and other countries, the UNCTAD secretariat should carry out a review of technical cooperation activities undertaken by UNCTAD and other international organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance in the area of competition by:

(i) encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;

(ii) encouraging developing countries and countries in transition to identify specific competition areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;

(iii) identifying common problems encountered in the competition area which might receive attention in regional seminars;

(iv) enhancing cost-effectiveness, complementarity and collaboration among providers of technical cooperation, both in terms of the geographical focus of technical cooperation activities and the nature of cooperation undertaken;

(v) mobilizing adequate resources and widening the search for potential donors for UNCTAD technical cooperation in this area;

(vi) proposing that in addition to the seminars already offered by the Secretariat and other countries in the interest of technical assistance and cooperation, two days of every second session of the Intergovernmental Group of Experts should be devoted to a forum for a comprehensive informal exchange of views and experiences of several developed and other interested countries on issues relating to cases concerning RBPs and other issues relevant to competition which have been raised by developing or other countries. The proposal envisages that developing or other countries wishing to benefit from the forum would give advance notice of their proposed RBP issues, in order to maximize the opportunities for exchange of views and experiences with member countries. The secretariat and especially developed countries should consider ways to enable (more) capital-based experts, particularly from developing and other countries to participate in this exercise;

(vii) proposing, in addition to the <u>multilateral consultations</u> already provided by the secretariat, at least one day of each [every second] session of the Intergovernmental Group of Experts

should be devoted to several small workshops at which the secretariat and a few experts from developed and other countries would exchange informally views and experiences with developing and other countries wishing to take advantage of such an exchange of views for the purpose of developing their analysis of specific issues of RBPs to a given country. The secretariat and especially developed countries should consider ways to enable (more) capital-based experts, particularly from developing and other countries, to participate in this exercise.

3. In the light of the strong world-wide trend towards the adoption or reform of competition laws and the development of national competition policies over the period since the Set was adopted, Governments might wish to decide at the Review Conference that UNCTAD would embark on an exercise to map out and further strengthen common ground among States in the area of competition policy in identifying restrictive business practices that affect the development of developing countries. In this context, the focus of the exercise, inter alia, would be on:

(a) identifying "common ground", i.e. broad similarities in the approaches followed on different competition questions by Governments;

(b) shedding light and encouraging exchanges of views in those areas where the identification of "common ground" is more difficult, e.g. where there are differences among economic theories, or among competition laws or policies, such as:

(i) The role of competition policy in the strengthening and improvement of the economies of developing and other countries and, in particular, the development of the business community;

(ii) Taking into account economic globalization and liberalization of the economies of developing and other countries, to invite UNCTAD to identify appropriate measures to help those countries that might be hampered by RBPs;

(iii) The interface between competition, technological innovation and efficiency;

(iv) The competition policy treatment of vertical restraints and abuses of dominant position;

(v) The competition policy treatment of the exercise of intellectual property rights (IPRs) and of licences of IPRs or know-how;

(vi) In-depth analysis of differences in the scope of competition laws in individual sectors, in the light of the process of economic globalization and liberalization;

(vii) In-depth analysis of the effectiveness of enforcement of competition laws, including enforcement in cases of RBPs having effects in more than one country;

4. For the purposes of this exercise, reference would be made to the commentary to the Model Law, other relevant documentation already prepared by the UNCTAD secretariat or to be prepared for the Conference (particularly the study on the scope, coverage and enforcement of competition laws and policies, and on selected cases of RBPs having an effect on more than one country, as approved), any further studies requested by Governments, and the database on competition cases and materials which the secretariat is being requested to further investigate.

5. In order to facilitate the use of the commentary to the Model Law as a basis for this exercise, the Conference would take note of the Model Law and its commentary as a guide to the competition approaches followed on various points by different countries. It would be understood that the Model Law would be widely disseminated, and that this action would not affect the discretion of countries to choose policies considered appropriate for themselves, and that the Model Law would be periodically reviewed in the light of reforms and trends at the national and regional levels.

6. During future consultations in meetings of the Intergovernmental Group of Experts, individual Governments may wish to clarify the scope or application of their competition laws and policies, as well as the manner in which they would have analyzed and dealt with some of the cases reviewed if they had occurred under their jurisdictions, taking into account relevant provisions of the Uruguay Round Agreements.

7. In the context of this exercise, Governments may wish to discuss:

(a) How the Set of Principles and Rules might be better implemented;

(b) The competition policy implications at the national, regional and

international levels of globalization and liberalization;

(c) Techniques and procedures for detecting and sanctioning collusive tendering, including international cartels and other anti- competitive practices;

(d) The strengthening of information exchange, consultations and cooperation in enforcement at the bilateral, regional and multilateral levels.

8. Future Intergovernmental Group of Experts sessions should include at least one day of informal multilateral consultations among delegates on competition policy issues. The topics for the consultations should be disseminated by the secretariat sufficiently in advance of session of the Intergovernmental Group of Experts so as to permit delegations from all member States to participate in the informal consultations.

9. Ways and means should be identified to increase the participation of experts/delegates particularly from developing countries, least developed countries and countries in transition, including those countries which had not yet adopted competition policy or laws.

III.

10. Other proposals, on which agreement could not be reached at this point, included:

(a) to request the General Assembly to convene a Fourth Review Conference in the year 2000;

(b) to decide to change the title of the Intergovernmental Group of Experts on restrictive business practices to that of IGE on Competition;

(c) to request countries to remove from their national legislation exemptions of export cartels;

(d) to undertake an analysis of transformation of restrictive business practices in the new conditions created after the conclusion of the Uruguay Round, to ensure a consensus on the issue of efficiency of the existing system of control of restrictive business practices in international deals and submit proposals on the perfection of the

system inter acting with GATT/WTO;

(e) to study empirical evidence of the benefits (including benefits for consumers) to be gained from applying competition principles to national economic development and competitiveness;

(f) to consider policy implications, which might include the elaboration of basic competition principles to be applied at the national, regional and international levels;

(g) What might be the aims and content of any agreement on trade-related aspects of competition policy which might be incorporated in international trade rules? Would it be concerned solely with RBPs by firms, or would it also address actions by Governments deviating from competition principles?

(h) Given the divergences in some areas of national competition policies and the continuing evolution of economic thinking and policies in this area, would it be appropriate for all multilateral agreements on competition to be legally binding, or would there also be room for non-binding guidelines? If so, what should be their role?

(i) In the light of answers to the above questions, should the Set be left unchanged, or should it be revised or supplemented by another instrument?

(j) If another instrument were considered necessary, what would be the nature, objectives and content of such an instrument - should it identify competition principles which might be taken into account in national economic policies, or should it also aim at bringing about greater compatibility between competition principles and international trade rules?